



Bay Area Clean Water Agencies

Leading the Way to Protect Our Bay

A Joint Powers Public Agency

P.O. Box 24055, MS 702

Oakland, California 94623

November 5, 2001

Ms. Loretta Barsamian
Executive Officer
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments on Tentative Orders for NPDES Permits for City of Millbrae (CA0037532) and West County Agency (CA0038539)

Dear Ms. Barsamian:

Thank you for the opportunity to comment on the Tentative Orders for the proposed NPDES permits for the City of Millbrae and West County SD. Bay Area Clean Water Agencies (BACWA) has a significant interest in NPDES permits adopted in the San Francisco Bay Region due to the significant effect each new permit may have on future permits. BACWA offers comments from the perspective of the broad community of municipalities and public agencies around the Bay who are potentially affected by the requirements and provisions contained in these permits.

BACWA supports and incorporates by reference the comments made by Millbrae and West County Agency on the subject Tentative Orders.

BACWA has the following specific comments on the proposed Tentative Orders:

Interim Mass Limits. BACWA has provided comments on a number of prior NPDES permits in which we have opposed the placement of interim mass limits for 303(d)-listed pollutants in NPDES permits prior to the development and adoption of a TMDL. The proposed Tentative Orders for Millbrae and West County Agency include proposed interim mass limits for mercury. We request that these interim mass limits be removed from the Millbrae and West County Agency permits.

We are supportive of interim performance-based *concentration* limits for those pollutants where the Regional Board is obligated to establish effluent limits under the Clean Water Act, California Water Code and State Implementation Policy. We believe those interim performance based concentration limits should be calculated based on the procedures outlined in our letter to your office dated April 27, 2001.

With regard to interim mass limits, we do not believe that such limits are necessary, reasonable or effective in the control of either mercury in the two discharges in question. The record for mercury established in the Regional Board's TMDL report to the USEPA indicates that, taken as a whole, NPDES permitted sources of mercury in San Francisco Bay are de minimus. The body of scientific information summarized in the Regional Board's TMDL report clearly indicates that

significant reductions in existing NPDES discharges of mercury would not be expected to have a significant effect on mercury levels in San Francisco Bay water, sediment or biota.

Zero Dilution Credit for 303(d)-listed Bioaccumulative Pollutants. The proposed permit states that the Regional Board staff has determined that a dilution credit is not warranted for bioaccumulative pollutants on the 303(d) list, based on best professional judgment. BACWA objects to this overly simplistic staff determination. As determined in the Regional Board's mercury TMDL document, stringent limitations on mercury (a bioaccumulative pollutant) as would be imposed through a zero dilution policy are unwarranted. BACWA believes that similar findings exist for the other bioaccumulative pollutants on the 303(d) list.

Dieldrin, 4,4-DDE. We object to the proposed adoption of final effluent concentration limits for these two pollutants. In the case of both Millbrae and West County Agency, dieldrin and 4,4-DDE have never been detected in either effluent. The ambient water column monitoring data for these pollutants is not compelling. Each of these pollutants is on the 303(d) list for the Bay, based on fish tissue concentrations. No definitive work has been done to relate water column concentrations to fish tissue concentrations of these pollutants in San Francisco Bay.

In such cases where there is no data or where there is inadequate detected data to perform a proper statistical analysis (e.g. the Helsel method or others), a reasonable and defensible action is to require additional effluent monitoring to gather information for the calculation of an interim performance-based limit (IPBL). Use of an SIP minimum level (ML) or other arbitrary value as an IPBL is not appropriate in this data deficient case, since no direct evidence is available to establish that the chosen value is in fact attainable (i.e. performance-based).

Use of effluent limits from an existing permit as basis for new effluent limits. In numerous existing permits in the San Francisco Bay region, effluent limits were placed as a result of either the 1994 Enclosed Bays and Estuaries Plan or versions of the San Francisco Bay Plan which were based on that plan. Where existing effluent limits were derived from either the remanded 1994 Enclosed Bays and Estuaries Plan or a remanded version of the San Francisco Basin Plan, these limits have no legal standing and should not be used in the manner outlined in the SIP. Directives from the SWRCB Office of Chief Counsel issued in the wake of the EBEP remand and actions on the South Bay NPDES permits to remove effluent limits based on the EBEP and associated Basin Plans strongly support this position.

The presumption in the SIP is that the existing effluent limits were legally established. Where that legal foundation clearly does not exist, the Regional Board should document this fact and, for the purposes of the SIP requirements, treat those limits as if they did not exist.

In the Millbrae permit, for instance, effluent limits from the prior permit are used to set effluent limits for TCDD equivalents, cyanide, copper, mercury, hexachlorobenzene, aldrin, PCBs and toxaphene.

We request that language in the subject permits (and other permits where this issue is applicable) be modified to clarify this point. Further, and most importantly, we request that Regional Board permit staff be directed to account for this fact in all other ongoing permit renewal activities.

Use of Narrative Water Quality Objectives to Establish Numeric Effluent Limits in Permits. Numerous references are made in the proposed Millbrae and West County NPDES permits and Fact Sheets regarding the use of narrative water quality objectives to evaluate reasonable

potential and establish effluent limitations. Reference is also made to the use of the narrative objective to establish the finding of impairment for mercury and other bioaccumulative pollutants.

In particular, the narrative objective is used to establish an effluent limit for TCDD equivalents. As noted in the CTR preamble, USEPA did not establish federal water quality standards for TCDD equivalents. USEPA only established a CTR standard for 2,3,7,8 TCDD. It is unclear how the Regional Board would find it acceptable to establish permit limits for TCDD equivalents given the fact that the USEPA did not feel that it had sufficient information to take a similar step in the CTR through the adoption of a water quality standard. The proposed language in the permits alleges that the Millbrae and West County agency discharges have a reasonable potential to contribute to the impairment of the narrative objective. In fact, no evidence exists that the permitted discharges are causing a detrimental increase in sediments or aquatic life and no assessment has been done to address either the magnitude or impact of these discharges. Therefore, the fundamental basis for the key finding of reasonable potential is unsubstantiated and without merit.

BACWA and other public agencies have consistently maintained that the use of the narrative toxicity objective to impose numeric values as de facto water quality objectives is improper and inconsistent with the procedures stipulated in law for setting and implementing water quality objectives in California as contained in the California Water Code. Our position on this matter is supported by the basic findings of the 1994 court judgment which invalidated the Enclosed Bays and Estuaries Plan and the recent NPDES permit decision in the case of the City of Los Angeles vs. SWRCB. It is our position that the use of the narrative objective in NPDES permitting decisions requires a variety of procedural elements which are missing in the proposed Millbrae and West County permits and in other permits issued by the Board. These elements include a complete analysis of the factors contained in Section 13000 of the Water Code, specifically Sections 13241 and 13242. It is also our position that the Clean Water Act and USEPA regulations require the Board to adopt and follow a clear procedure for the translation of narrative water quality objectives to numeric objectives. This has not been done to date and represents a serious legal deficiency in the approach taken in the Millbrae and West County permits. We assert that the approach described in the subject permits (and others) subverts the intent of established state and federal processes for developing and implementing water quality objectives and must be halted.

We request that all numeric permit limits in the proposed permits which are derived from the narrative toxicity standard be eliminated.

Translators. We are compelled to voice our dissent over the language in the Millbrae and West County permits (and others) which describes the application of translators in the development of effluent limits. We recognize that our dissent flies in the face of the use of translators as stated in the SIP (the record will show that BACWA protested this element of the SIP). The problem with the approach described in the subject permits is contained in the statement that translators are used to convert dissolved water quality objectives/standards to total water quality objectives/standards. This fundamentally contradicts the purpose and intent of the EPA Metals Policy, which says that water quality objectives/standards should be expressed as dissolved metals. The EPA Metals Policy adopted this position because scientific experts agree that ambient levels of dissolved metals are superior indicators of bioavailability and toxicity of metals in natural systems. The use of ambient levels of total metals to judge toxicity to aquatic organisms is an obsolete approach to metals management.

The proper use of translators is in the derivation of total effluent limits from dissolved objectives/standards. Translators should be applied to calculate effluent limits (expressed as total metals) by dividing water quality based dissolved limits by the translator value. The translator value is then properly applied to predict the amount of dissolved metal in the receiving water that will result from the discharge of a given concentration of total metals in effluent.

Phenols and PAHs. The proposed permit seeks to substitute CTR standards in place of the existing Basin Plan objectives for Phenols and PCBs. However, the language of the CTR specifically states that the San Francisco Basin Plan objectives take precedence over the CTR standards. We request that the language of the permit be modified to reflect this legal requirement.

Again, thank you for the chance to provide these comments. If you have questions or comments regarding the points raised in this letter, please contact us at your earliest convenience. We look forward to discussing these comments with you in the near future.

Sincerely,

A handwritten signature in black ink, reading "Charles V. Weir". The signature is fluid and cursive, with the first name "Charles" and last name "Weir" clearly legible, and "V." in the middle.

Charles V. Weir, Chair
BACWA